

REMARKS/ARGUMENTS

Entry of the foregoing and reexamination and reconsideration of the above-captioned application pursuant to and consistent with 37 C.F.R. § 1.112, and in light of the amendments and remarks that follow are respectfully requested. A petition for a three-month extension of time is enclosed. It is believed that these amendments and the accompanying remarks address the issues raised in the final Official Action and place this matter in condition for allowance. Therefore, entry of these amendments is consistent with 37 C.F.R. § 1.112.

Claims 15-32 are pending. Claims 15-30 and 32 are rejected. Claim 31 is objected to. Claims 15, 17, 18, 21, 25, 28, 30, 31 and 32 are amended. Claims 33 and 34 are added. Reexamination of the above-captioned application in light of the remarks that follow is respectfully requested.

The Examiner has objected to the Information Disclosure Statement as not being proper pursuant to 37 C.F.R. § 1.98(b). Applicants have reviewed the Information Disclosure Statement as originally filed on March 12, 2001, and submit an amended Information Disclosure Statement in response to the Examiner's comments.

The Examiner has rejected claims 15-29 under 37 C.F.R. § 1.75(c) as being of improper independent form for failing to further limit the subject matter of a previous claim. According to the Examiner, claims 15-29 depend from a cancelled claim, namely cancelled claim 14, and thus, fail to further limit the scope of the subject matter of a previous claim. Claims 15, 17, 18, 21 and 25 have been amended to depend from base claim 32.

The Examiner has rejected claims 15-29 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter that Applicants regard as the invention. Specifically, the Examiner states that claims 15-29 recite the limitation "the apparatus" in line 1, for which there is an insufficient antecedent basis in the claim. As previously discussed, Applicants have amended claims 15-29, which renders this rejection as moot.

The Examiner has rejected claim 32 under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 4,366,384, issued to Jensen ("*Jensen*"). Initially, the Examiner argues that the preamble of claim 32 should not be given patentable weight because the intended

use of determining the presence of a fluid conduit does not result in a structural difference between the claimed invention and *Jensen*. The Examiner also argues that claim 32 is anticipated by *Jensen*, which purportedly teaches each of the elements of claim 32. Applicants respectfully traverse.

Claim 32 has been amended to more clearly describe the differences between the claimed invention and the prior art cited by the Examiner, thereby rendering the issue moot. That said, however, the Examiner ignores the fact that the intended use of determining the presence of a fluid conduit has important structural components that differentiate the present invention from *Jensen*. Indeed, Applicants have amended claim 32 to specifically recite that the light source is disposed for transmitting light to a location, and the second sensor is disposed for detecting a portion of the light in such a way as to allow determination of the presence of a conduit. Thus, the recitation is more than one of function, but one of structure as well. *Jensen* does not teach the ability to determine the presence or absence of a fluid conduit located at a predetermined location. *Jensen* neither teaches the possibility of undertaking such a determination nor a structure including the presence of disposed light sources and/or detectors for accomplishing same. The reflective sensor as taught by *Jensen* is arranged to detect the presence of air bubbles in the fluid inside the conduit only. Moreover, *Jensen* does not teach a second optical sensor that detects light reflected from the outer wall of the fluid conduit. In the present invention, a second optical sensor, which operates to detect light reflected back from the outer wall of the fluid conduit, is taught. As *Jensen* does not teach each of the elements of claim 32, the section 102 rejection must be withdrawn. And because *Jensen* does not teach or suggest these elements, it cannot render these claims obvious. Because claims 15-29 directly or indirectly depend from claim 32, they include each of its novel features. Therefore, it is respectfully submitted that claims 15-29 are allowable over *Jensen*.

The Examiner has rejected claim 30 under 35 U.S.C. § 103(a) as being unpatentable over *Jensen* in view of U.S. Patent No. 4,884,065, issued to Crouse *et al.* ("*Crouse*"). The Examiner recognizes that *Jensen* lacks determining the presence of the fluid conduit at a predetermined location. The Examiner argues that it would have been obvious to one having ordinary skill in the art to combine *Jensen* with *Crouse*, which the Examiner states

teaches a second sensor used for detecting reflected light by the presence of a tube in order to verify that the tubing is properly situated (col. 3, lns. 34-36; col. 6, ln. 65 to col. 7, ln. 12). Applicants respectfully traverse.

"Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art." MPEP § 2143.01. "The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art ..." *Id.* (emphasis added); *see also In re Vaeck* 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

In this case, the Examiner identifies nothing in either *Jensen* or *Crouse* that teaches or suggests a combination of these references, or anything in either reference that would motivate one to combine or modify these references. Although *Crouse* teaches an "additional" sensor that verifies that the tubing is properly situated in the apparatus, that sensor does not detect any light if the tubing 12 is properly located in the V-shaped recess 24; the tubing blocks the transmission of light to the tubing/no tubing sensor. Under such circumstances, light from the LED 38 "will not reach the tube/no tube sensor" (col. 7, ln. 10). In contrast, the present invention relies on light reaching *both* sensors, whether directly or by reflection, whereas *Crouse* does not disclose a second sensor that detects light reflected from the outer wall of the fluid conduit when the fluid conduit is properly situated. As nothing in either reference suggests that the references be combined to produce the present invention as taught, claim 30 should be allowable, and the rejection under section 103(a) withdrawn. Because claim 31 depends from claim 30, it includes each of its novel features. Therefore, it is respectfully submitted that claim 31 is allowable over the references cited.

The Examiner has objected to claim 31 as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. New claim 33 has been added incorporating the subject matter of claim 31 as well as the limitations of claim 30.

In view of the above, each of the presently pending claims in this application is

believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he/she telephone Applicants' attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: September 8, 2003

Respectfully submitted,

By 

Michael H. Teschner
Registration No.: 32,862
LERNER, DAVID, LITTENBERG,
KRUMHOLZ & MENTLIK, LLP
600 South Avenue West, Ste. 300
Westfield, New Jersey 07090
(908) 654-5000
Attorney for Applicants